THE HONOURABLE SRI JUSTICE GODA RAGHURAM

Writ Petition No.5337 OF 2007

Dated: 15-03-2007

Between:

M/s. Mohi Enterprises, represented by the Managing Partner Syed Hamid Mohammed Quadri and another. **..PETITIONER**

AND

State Bank of India, Charminar Branch, Hyderabad, rep. by its Branch Manager and 2 ors. **...RESPONDENT**

THE HONOURABLE SRI JUSTICE GODA RAGHURAM

W.P.No.5337 of 2007

ORDER:

The petitioners a partnership firm and its Managing Director challenge the notice issued by the 1st respondent dated 05-02-2007, under Section 13 (2) of Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (for short ' the Act 2002') calling upon the petitioners to repay an amount of Rs.11,20,724/- together with further interest and incidental expenses and costs within a stipulated time, failing which the respondents would initiate further steps under Section 13 (3) of the Act 2002.

The 1st petitioner obtained a loan from the 1st respondent bank and defaulted. The 1st respondent filed O.A.No.650 of 1997 before the Debt Recovery Tribunal at Bangalore for recovery of an amount of Rs.11,20,724/- with further interest. Later the O.A was transferred to Debt Recovery Tribunal, Hyderabad on the point of territorial jurisdiction and is renumbered as O.A.No.908 of 1999. According to the petitioners all the pleadings are complete and the bank has also filed the necessary documents and concluded its evidence. According to the petitioners they represented to the

respondents for a one time settlement and the same is under consideration by the respondents. While so, the impugned notice is issued under Section 13 (2) of the Act 2002.

Though the petitioners assail the validity of the Act 2002, in the pleadings no relief of its invalidation is sought. Learned counsel for the petitioners Sri A.Bichaiah would, however, vehemently contend that as the respondents have initiated proceedings under Recovery of Debts Due to Banks and Financial Institutions Act, 1993 (for short 'the 1993 Act') it ought not to be permitted to proceed under the provisions of the Act 2002. On behalf of the petitioners this plea is colourfully labelled as the doctrine of double jeopardy. As no double jeopardy is involved, on fact or principle the said contention does not commend acceptance. Alternatively, the petitioners' contend that as the respondents had already initiated proceedings under the provisions of the 1993 Act, they are disabled from proceeding under the Act, 2002. This contention also does not commend acceptance. Both 1993 Act and the Act 2002 are legislative exercises of the Parliament. The Act 2002 is subsequent in point of time and Section 35 of the Act enjoins that the provisions shall have effect, notwithstanding anything inconsistent therewith contained in any other law for the time being in force or any instrument having effect by virtue of any such law.

Even on the legislative plane therefore the availability of a remedy under the provisions of the 1993 Act would not be a clog on the 1st respondent's freedom to pursue the speedier remedies under the provisions of the Act 2002. No other legal principle is either pleaded or addressed to satisfy this Court that the action of the 1st respondent seeking to initiate steps under the provisions of the Act 2002 suffers from any patent lack of

jurisdiction. In respect of the notice issued under Section 13 (2) of the Act 2002 the petitioners are always at liberty to lodge their objections or to submit an explanation, and when such an explanation is submitted, the respondents, in particular the 1st respondent is required to respond under Section 13 (3) (a) of the Act 2002. In the light of the availability of this window of opportunity, the grievance of the petitioners that OTS is also pending consideration by the respondent bank does not assume significance.

On the analysis above, no case is made out for interference by this Court. There are no merits in the writ petition and is dismissed. No costs.

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(GODA RAGHURAM,J)

Date:15-03-2007
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Writ Petition No.5316 OF 2006

Dated: 15-03-2007